

MAR-WIN DEVELOPMENT CO.

IBLA 75-351

Decided June 12, 1975

Appeal from decision of Wyoming State Office, Bureau of Land Management, disqualifying oil and gas lease offer W 48719.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases:
Noncompetitive Leases--Oil and Gas Leases: Rentals

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

2. Applications and Entries: Generally--Applications and Entries: Filing--
Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases:
Rentals

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

APPEARANCES: James L. Darrah, Esq., Chapman, Kansas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Mar-Win Development Co. has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 23, 1975, disqualifying appellant's oil and gas lease offer W 48719. The basis of the decision was that appellant's payment of the first year's rental had not been received within the period allowed therefor.

By notice dated December 18, 1974, and served on appellant on December 21, 1974, appellant was notified by BLM that as a result of a simultaneous oil and gas drawing, it was entitled to an oil and gas lease for parcel 64 having a rental of \$40 per annum. The notice further stated:

In accordance with regulations 43 CFR 3112.4-1, payment of the first year's rental must be received in this office within 15 days from receipt of this notice. If the rental is not paid within the time allowed, you will be automatically disqualified to receive the lease.

The decision of BLM, dated January 23, 1975, recited as follows:

The records in this office show the "Notice of Rental Due" for the above numbered application was received by your office on December 21, 1974.

The rental notice states payment must be received in this office within 15 days from receipt of this notice. As the 15th day fell on a Sunday you had until 4:00 P.M. Monday, January 6th, to submit the rental. Rental was not received until January 7.

Accordingly, your offer is hereby disqualified for this parcel. See Duncan Miller, 17 IBLA 267 (1974).

Advance rental will be scheduled for refund at expiration of the appeal time.

Appellant does not dispute that payment was not received until January 7, 1975. It states that a check for the rental was drawn and mailed on December 30, 1974. It urges: that there elapsed seven days between the date of mailing and January 6, 1975, when

the payment was due; that from receipt of the notice until January 6, 1975, two federal holidays intervened; and that "in the normal course of business" the payment should have been received on or before January 6, 1975. Appellant asserts that it should not be chargeable for "the apparent inefficiency of the United States Mails."

[1] We held in Duncan Miller, 17 IBLA 267, 268 (1974), as follows:

* * * The applicable regulation, 43 CFR 3112.4-1, provides that "[r]ental must be received * * * within fifteen (15) days from the date of receipt of notice * * *." Failure to file necessary documents or to make required payments on time results in cancellation of a lease or disqualification of an offeror. See J. V. McGowen, 9 IBLA 133 (1973). The regulation requires the filing, not just the tendering, of such payment within the period. See 43 CFR 1821.2-2(f). The rental payment regulation makes disqualification under such circumstances automatic and the offer having next highest priority is immediately put under consideration. 43 CFR 3112.4-1. The regulation thus admits of no grace period, since adverse parties' rights are involved. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). See 43 CFR 1821.2-2(g).

The disqualification of appellant's offer for failure to submit the advance lease rental within the prescribed time is mandatory. Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C., filed March 25, 1975).

Insofar as appellant seeks to shift to the Post Office the onus of the failure to pay timely, the Department stated in H. P. Saunders, Jr., 59 I.D. 41, 42-43 (1945), as follows:

* * * Clearly, the letter received by the register on January 3, 1944, does not meet that requirement because the date of its "filing" was January 3, 1944, i.e., after the expiration of the lease. "Filing, it must be observed, is not complete until the document is delivered and received. 'Shall file' means to deliver to the office and not send through the United States mails. * * * A paper is filed when it is delivered to the proper official and by him received and filed." United States v. Lombardo, 241 U.S. 73, 76 (1916); Poynor v. Commissioner of Internal Revenue, 81 F. (2d) 521, 522 (C.C.A. 5th, 1936);

Weaver v. United States, 72 F. (2d) 20, 21 (C.C.A. 4th, 1934); Tyson v. United States, 76 F. (2d) 533, 534 (C.C.A. 4th, 1935); Wampley v. Snyder, 66 F. (2d) 195, 196 (App. D.C., 1933); Stebbins' Estate v. Helvering, 74 App. D.C. 21, 121 F. (2d) 892, 894 (1941); Creasy v. United States, 4 F. Supp. 175, 177-178 (D.C.W.D.Va., 1933). Even if, as claimed by Saunders, the letter, in the usual course of the mails, should have received the register at Las Cruces prior to the expiration of the lease, the fact nevertheless remains that the applications were not filed on time, for a paper is considered filed only at the time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the regular course of the mails. Poynor v. Commissioner of Internal Revenue, *supra*; Weaver v. United States, *supra*. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was "negligent." (Footnote omitted.)

It necessarily follows them even assuming, arguendo, that the Post Office was negligent, it does not constitute any basis for relief in the case at bar.

There is no "reinstatement" provision for disqualified simultaneous oil and gas lease offers; the standards in 30 U.S.C. § 188(c) (1970) are inapposite.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

